

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1625 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT VIDYAPITH

Versus

GIRISH M BHATT

Appearance:

1. Special Civil Application No. 1625 of 2000
MR GM JOSHI for Petitioners No. 1-2
MRS DT SHAH for Respondent No. 1
MS SHRADDHA TRIVEDI AGP for Respondents No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/11/2001

ORAL JUDGEMENT

Heard Mr.Gautam M.Joshi, appearing on behalf of
the petitioner and Mrs.D.T.Shah, learned advocate for the
respondent No.1 so also Ms.Shradhha Trivedi, learned AGP

for the respondent No.2. No one appeared on behalf of the respondent No.3 though notice of Rule has been served.

2. In the present petition, rule has been issued by this Court on 27th April, 2000. Meanwhile, interim relief has been granted against the operation of the order in question and the rule has been made returnable on 8th August, 2000. On behalf of the respondents, affidavit in reply has been filed on 28th March, 2000. No rejoinder thereto has been filed by the petitioner.

3. In the present petition, the petitioner has challenged the order passed by the Gujarat University Services Tribunal in application No.27/1999 dated 6th March, 2000. The facts of the present petition, in short, are as under :

In the year 1988, the first respondent filed Special Civil Application No. 7659 of 1988 before this Court. Said petition was admitted by this Court. Thereafter, in the year 1999, in view of the constitution of the tribunal, said petition was transferred to the tribunal and it came to be renumbered as an application No. 27 of 1999. Said petition was transferred to the tribunal by this court by order dated 28th June, 1999. After transfer of the matter before the tribunal, the respondent No.1 submitted an application before the tribunal on 6th March, 2000 with a request to allow the proposed amendment which is attached as a schedule to the application for amendment. Said application was moved by the respondent no.1 on the ground of discrimination amongst similarly situated employees who have been paid the scale of research assistant whereas the respondent No.1 has not been paid the pay scale inspite of the fact that the respondent no.1 has discharged similar duty like others. The second ground for amendment was that the respondent no.1 is claiming salary on the principles of equal pay for equal work on the ground that the respondent no.1 has done equal work on the sanctioned post. The reasons for making application for amendment after some period was given by the respondent that he is residing at Bhavnagar and he has recently come to know about these facts which are having direct nexus with the issue. It was also the case of the respondent No.1 before the tribunal that the amendment sought for by the respondent No.1 was not causing any prejudice to the case of the present petitioner and the amendment is required because of the facts which is likely to take place which would render justice to the parties. The tribunal has jurisdiction under section 8 to decide the dispute or

real controversy between the parties. In view of this back ground, the amendment has been moved by the first respondent before the tribunal on 6.3.2000 alongwith the schedule. Copy of the said application has been supplied to the petitioner and, thereafter, the petitioner has requested the tribunal to grant some time to file the written reply against the proposed amendment but the tribunal has not granted any time to the petitioner and has allowed the amendment by order dated 6th March, 2000 and the tribunal has also granted time to the petitioner to file detailed reply against the amended petition. Therefore, the petitioner has challenged the order dated 6th March, 2000 before this court only on the ground that there was delay and laches on the part of respondent no.1 in moving an application for the proposed amendment.

4. Learned advocate Mr. Gautam Joshi appearing for the petitioner has vehemently argued that the tribunal has denied reasonable opportunity to the petitioner to file objection against the proposed amendment; the manner in which the tribunal has proceed amounts to denial of reasonable opportunity. He has submitted that the amendment has been placed on record on 6th March, 2000 and copy thereof has been supplied to the petitioner on the spot and thereafter, without going into the averments made in the amendment, advocate who was representing the petitioner before the tribunal had requested the tribunal for granting some time to file objection against the said application by filing reply but the said request was rejected by the tribunal and that created compelling circumstances for the petitioner to make submissions against the proposed amendment. He has further submitted that the application for proposed amendment has been moved by the respondent before the tribunal at the time of oral arguments and either side has not led any oral evidence before the tribunal and, therefore, at that stage, such an application ought not to have been allowed without affording reasonable opportunity to the petitioner because there was delay and laches on the part of the respondent No.1 in moving such an application. He has also submitted that all these aspects were not taken into consideration by the tribunal and the tribunal has hurriedly decide the said application on the same day and, therefore, it is the grievance of the petitioner that such a course adopted by the tribunal was wholly unwarranted in law and the same is against the principles of natural justice.

5. Learned advocate Ms. D.T. Shah appearing for the respondent No.1 has, on the other hand, submitted that the amendment application submitted by the

respondent No.1 was not changing the nature of dispute or the matter pending before the tribunal. She has also submitted that no prejudice was going to be caused to the case of the petitioner by the said amendment. According to her, the amendment sought by the respondent No.1 was relating to real controversy between the parties. She has also submitted that the provisions of Order 6, Rule 17 of the Code of Civil Procedure are applicable to the proceedings before the tribunal and looking to the provisions made under Order 6, Rule 17 of the Code, the Court may allow the amendment at any stage in pleadings in such a manner and on such terms as may be just. She has, therefore, submitted that proposed amendment was not changing the subject matter and after granting the amendment, the tribunal has granted opportunity to the petitioner to file detailed reply against the amended petition. She has submitted that in view of this, the tribunal has, in reality, given an opportunity to the petitioner. She has, however, submitted that after all, it is an order which is interlocutory in nature and, therefore, as per the view taken by this Court in case of Cadila Health Care Ltd. versus Union of India and others reported in 1998 (2) G.L.H. 513, this Court should not interfere with such an interlocutory order because there was no final adjudication by the tribunal and, therefore, this Court should not interfere with such interlocutory order while exercising the extra ordinary powers under Article 226 and/or 227 of the Constitution of India. According to her, the petition challenging interlocutory order is not maintainable. She has submitted the petitioner is having an opportunity to file detailed reply against the amended petition and, therefore, this Court should not interfere with such an order which is interlocutory in nature and therefore, this petition should be dismissed.

Learned AGP Ms. Shraddhaben Trivedi appearing for the State Authorities has submitted that no error which is apparent on the face of the record has been committed by the tribunal while passing the impugned order granting amendment sought by the respondent No.1. She has also submitted that the petitioner has not been able to point out that any jurisdictional error has been committed by the tribunal and, therefore, this Court should not interfere with the impugned order and the petition should be dismissed with costs.

I have considered the submissions made by the learned advocates for the respective parties. I have

also perused the application for amendment which was moved by the respondent No.1 before the tribunal as well as the order passed by the tribunal on the said application on 6.3.2000. The real question which is required to be considered by this Court is whether by way of amendment, the subject matter or the main dispute pending before the tribunal is changed or not. For that, there was no submission made by Mr. Joshi, learned advocate appearing for the petitioner. It is not his submission that the amendment moved by the respondent No.1 was changing the subject matter or the main dispute pending before the tribunal. While granting the amendment in question, the tribunal has, in terms, observed that the amendment sought for is not in connection with the subject matter and the tribunal was of the view that the amendment, if allowed by granting time to the other side to file reply to the amended petition, then, the same will be helpful to the tribunal to adjudicate the subject matter in better manner. The tribunal has also observed that the purpose of constituting the tribunal is to have speedy justice between the parties. After considering the settled legal position in respect of the matter at issue, the tribunal has come to the conclusion that no prejudice was going to be caused to the petitioner by granting the amendment in question and if the petitioner is having any objection against the amendment, then, the petitioner can file such objection in the form of detailed reply. Thus, the tribunal has observed that the petitioner will have an opportunity to raise all contentions available in law against the amended petition which can be considered by the tribunal while deciding the matter finally. The tribunal has also taken into account that the matter in question was very old matter of the year 1988 which was transferred to the tribunal in the year 1999 on 28th June, 1999 and, therefore, in view of these factual aspects, the tribunal thought it proper not to delay the matter any further by allowing the petitioner to file objections against the proposed amendment. In other words, instead of that, the tribunal kept open right in favour of the petitioner to file detailed reply against the amended petition.

In view of these observations made by the tribunal, the view taken by this Court in case of Prabhudas R. Patel and Others versus Heirs of Patel Motibhai B. Dashrath : Ambalal M. Patel & Others reported in 1997 (2) GLH 434 is relevant. As per the said decision, as per the provisions of Order 6, Rule 17 of the Code of Civil Procedure, 1908, ordinarily, the amendment of the plaint or pleading is to be allowed

unless it is likely to cause prejudice to the case of the other side. As per the said decision, if the amendment is required in the interest of justice and is necessary for the purpose of determining the real controversy between the parties, the Court has power to grant belated amendment application subject to certain terms and conditions. In para 9 and 10 of the said decision, it has been held by this Court as under :

"9. The law as to amendment of plaint under

Order 6, Rule 17 of the Code of Civil Procedure has been well stated in the two earlier decisions of the Supreme Court reported in L.J. Leach & Co. Ltd. v. M/s. Jardine Skinner & Co. reported in AIR 1957 SC 357 and P.H. Patil v. Kalgond Shidgonda Patil reported in AIR 1957 SC 363. This Court has occasion to consider the law as to amendment in detail in the case of Bakunvarba Jakhubhai Jadeja v. Chandubha Gumansing Jala reported in 1996 (2) GLH 372. Ordinarily, amendment of plaint is to be allowed unless it is likely to cause prejudice to the defence of the defendant. As per the requirement, under Order 6, Rule 17 of the CP Code, if the amendment is one which is required in the interest of justice, court has discretion and jurisdiction to allow such amendment. The Court has also observed that it is no doubt true that the Courts would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered. That factor however does not affect the power of the court to order amendment, if that is required in the interest of justice.

10. Ultimately, it is exercise of discretion

by the Court and that discretion shall have to be judicially exercised. All amendments ordinarily are required to be allowed which satisfy the two conditions, first not working injustice to other side, and second of being necessary for the purpose of determining the real questions in controversy between the parties."

Similarly, this Court has another occasion to deal with the subject and considering the same facts and circumstances, under the provisions of Order 6, Rule 17

of the Code of Civil Procedure, this Court has held as under in case of Chhaganlal Lavjibhai Kalaria versus Chairman & Managing Director, Bharat Petroleum Corporation reported in 1993 (1) GLH 797, in para 9 and 10:

"9. One of the considerations for deciding the facts of the application for amendment is to avoid multiplicity of proceedings between the parties. If the amendment sought by the present appellant in his plaint was required to be refused, he would have been driven to file another suit seeking enforcement of the Dealership Agreement between the parties and for the relief of mandatory injunction for restoration of supply of petroleum products at the petrol pump together with the relief of permanent injunction restraining the present respondents from taking away possession of the petrol pump from him. The grant of amendment sought by the present appellant in his plaint become necessary to avoid the second round of litigation between the parties. In other words, it was necessary to avoid multiplicity of proceedings between the same parties. Again, it was necessary for the purpose of determining the real real question in controversy between the parties. It is needless to repeat that the real controversy between the parties was justifiability of the action of the Corporation of terminating the Dealership Agreement. This proposition of law flows from the aforesaid ruling of the Supreme Court in Jai Jai Ram Manohar Lal's case (supra).

10. I am, therefore, of the view gthat the order passed by the learned Chamber Judge on 23rd November, 1983 permitting the present appellant to amend his plaint in terms of his application at Exh. 10 accompanying his Chamber Summons at Exh. 9 on the record of the Trial Court was quite legal, just and right. It needs no interference by this Court at this stage."

I have considered the observations made by this Court in aforesaid two decisions of this Court. Considering the facts of the present case, no doubt, the respondent No.1 has filed an application for amendment of the main petition after the delay of about 12 years and at the stage of oral arguments but the amendment sought by the respondent no.1 was not changing the subject

matter and there was no new case made out by the respondent No.1 and there was no submission made by Mr. Joshi that such amendment was changing the subject matter or that the respondent No.1 was putting up altogether a new case by way of the amendment sought for or that it was causing prejudice to the case of the petitioner. Therefore, in view of these facts, when the subject matter remains the same and by way of amendment, some details have been given by the respondent No.1 in order to render assistance and facilitate the tribunal to decide the real controversy between the parties and when no prejudice was going to be caused to the petitioner, then, in such circumstances, as per the principles laid down by this Court in aforesaid two decisions, ordinarily, such amendment has to be allowed. The second factor is that if the amendment application is not allowed, then, it may lead to multiplicity of proceedings between the parties. If the amendment sought for by the present respondent No.1 is not allowed, then, he would have been driven to file another petition on different grounds and, therefore, just to avoid such multiplicity of proceedings, the amendment was required to be allowed. Therefore, according to my opinion, the tribunal was right in granting the amendment as the subject matter is not changed, no prejudice has been caused to the petitioner and an opportunity has been given to the petitioner herein. In view of these facts, the tribunal, while allowing the amendment application by order dated 6th March, 2000, has not committed any error apparent on the face of the record requiring interference of this Court while exercising the powers under Article 226 and/or 227 of the Constitution of India.

It is necessary to note one more aspect that such petition wherein interlocutory order passed by the tribunal has been challenged by the petitioner, the question is whether such petition challenging interlocutory order should be entertained by this Court or not while exercising the extraordinary powers under Article 226 and/or 227 of the Constitution of India. The view taken by this Court in case of Cadila Health Care Ltd. versus Union of India reported in 1998 (2) GLH 513 is relevant in this regard. In para 11 of the said decision, this Court has held as under :

"11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the

scheme of the Act aforesaid whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi-judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Article 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter, if worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of THE COOPER ENGINEERING LTD V. P.P. MUNDHE, reported in AIR 1975 SC 1900. The Apex Court, in this Case, held:

10. In Management of Ritz Theatre [P]

Ltd. Vs. Its Workmen [AIR 1963 SC 295]
this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision that since the management at the very commencement of the trial before the tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this Court made some significant observations :-

"In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only whether the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the

employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the tribunal to deal with the merits for itself, because as soon as he asked for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that, in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer : if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence."

In light of these observations made by this Court, considering the challenge against the interlocutory order, when the case has not been finally decided, in such event, petition challenging interlocutory order cannot be entertained and right to challenge such order would arise only when it becomes final. Therefore, according to my opinion, in view of the principles laid down by this court in aforesaid decision in case of Cadila Health Care Ltd. (supra), petition challenging interlocutory order cannot be entertained by this court. Therefore, present petition is required to be dismissed on both the grounds namely on merits as also on the ground that it challenges an order which is interlocutory in nature.

Therefore, considering the aforesaid observations and considering the fact that present is an old one which has been transferred from this Court to tribunal in the year 1990 and the fact that this matter is still pending at the stage of amendment and no reply has yet been filed by the present petitioner against the amended petition, and the fact that this Court has granted interim stay on 27th April, 2000 and the matter is still pending before this Court for more than one year, this Court is of the opinion that contention of the petitioner for giving an opportunity of hearing and filing of the written reply can be satisfied by directing the tribunal to give an opportunity of leading oral evidence to both the parties in respect of main petition as well as amended petition, will meet the ends of justices. However, the tribunal though granted sufficient time to the petitioner to file reply to the amended petition, however, since the

petitioner has challenged the said order before this Court, no reply has been filed by the petitioner to the amended petition and therefore, the petitioner is required to file reply against the amended petition within some reasonable time. In light of these facts, present petition is not entertained and the same is disposed of with following directions.

It is directed to the Tribunal concerned to decide the matter after permitting the petitioner to file a detailed reply against the amended petition on or before 31st December, 2001 and thereafter, to give opportunity to both the parties to lead oral evidence in respect of original as well as amended petition.

In view of above observations and directions, present petition is disposed of accordingly. Rule is discharged. Ad-interim relief granted earlier shall stand vacated. Office is directed to send writ of this order directly to the tribunal concerned forthwith. No order as to costs.

Dt. 29-11-2001 [H.K.Rathod, J.]

Vyas